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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION**

UNITED STATES,  
Plaintiff  
vs.  
JIZHONG CHEN,  
Defendant

| Case No. 5:19-cr-0056 EJD

# **DEFENDANT JIZHONG CHEN'S OPPOSITION TO GOVERNMENT'S MOTION FOR REVOCATION OF ORDER REMOVING LOCATION MONITORING**

Defendant Jizhong Chen, through undersigned counsel, hereby opposes the Government's motion for revocation of the Magistrate Judge's October 15, 2019, order removing location monitoring as a condition of his pretrial release.

## I. Factual and Procedural Background

Mr. Chen, a United States citizen, is charged by Indictment dated January 31, 2019, with a single count of violating 18 U.S.C. 1832(a)(2) (theft of trade secrets). The gravamen of the allegation is that, on December 19, 2018, Mr. Chen photographed an alleged trade secret owned by Apple, his employer, with the intent to convert it. There is no evidence or allegation that Mr. Chen ever transferred any Apple intellectual property to any third party. He was arrested on January 23, 2019, on his way to San Francisco International Airport to board a flight to China to visit his

1 terminally ill father.<sup>1</sup> He had notified Apple of his intent to travel to China for this purpose, and  
2 even delayed the trip at Apple's request. It was to have been Mr. Chen's approximate sixth trip to  
3 China since he left that country to move to the United States in 1991.

4       Mr. Chen was originally ordered released by Magistrate Judge Virginia DeMarchi on January  
5 25, 2019, on a series of conditions including *inter alia* a \$500,000 secured bond (\$100,000 in cash,  
6 and \$400,000 secured by a residence owned by Mr. Chen and his wife in Maryland), the surrender of  
7 all Mr. Chen's passports and visas, and GPS monitoring. Mr. Chen's wife, who lives in the family  
8 home in Maryland, is also a signed surety for the bond. Judge DeMarchi informed the parties that  
9 she intended to order the removal of the GPS monitoring once the full amount of the bond had been  
10 secured – the bond amount would comprise a significant portion of the Chen family's assets. The  
11 government objected to the pending removal of the monitoring device, arguing in part in support of  
12 keeping that release condition that it had found a single classified document from a former employer  
13 of Mr. Chen when it executed a search warrant at the Chen's residence in Maryland.

14       On March 20, 2019, Judge DeMarchi issued an amended release order which required Mr.  
15 Chen to remain on RF monitoring even though he had fully secured the \$500,000 bond, and asked  
16 Pretrial Services to submit a status report within 45 days of the order advising the Court of Mr.  
17 Chen's compliance. The Court justified the RF monitoring requirement, subject to the 45-day status  
18 report, in part to permit the Government to continue its investigation into the uncharged conduct of  
19 which it complained at the bail hearing.

20       On October 2, 2019, Pretrial Services requested that the RF monitoring requirement be  
21 removed. At the October 15, 2019, hearing, Pretrial Services and the defense argued that the  
22 monitoring requirement was unnecessary in light of all relevant circumstances, including the fact  
23 that Mr. Chen had been fully compliant with his release conditions for almost nine months and had  
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25       <sup>1</sup> As the Government acknowledges in its moving papers, Mr. Chen purchased a roundtrip ticket, and

1 found permanent employment. Judge DeMarchi ordered the RF monitoring requirement removed,  
2 but stayed her order to allow the Government to seek review in this Court.

3       II. Discussion

4             Location monitoring, whether RF or GPS, is unnecessary to secure Mr. Chen's appearance in  
5 this Court and is therefore an illegal condition of pretrial release under the Bail Reform Act.  
6 Pursuant to 18 U.S.C. § 3142(c)(1)(B), the Court must impose the least restrictive conditions or  
7 combination of conditions that will reasonably assure the appearance of Mr. Chen in these  
8 proceedings.

9             Mr. Chen is a United States citizen whose primary asset, his family's Maryland home,  
10 secures his release. He has no criminal history whatsoever. The Government's primary argument  
11 that Mr. Chen poses a flight risk – that he was born in China and intended to fly there to visit his  
12 terminally ill father – should be viewed by this Court with the same skepticism demonstrated by the  
13 Magistrate Judge during oral arguments and in her March 20, 2019, order modifying Mr. Chen's  
14 conditions of release. *See Docket No. 23.* The Government cites several cases from the Northern  
15 District of California in which defendants in white collar cases apparently fled the United States  
16 before trial. However, as the Government is well aware, the Bail Reform Act requires that  
17 defendants be assessed on an individualized basis by this Court in all detention hearings. *See, e.g.,*  
18 *United States v. Scott*, 450 F.3d 863, 874 (9<sup>th</sup> Cir. 2006) (citing *United States v. Salerno*, 481 U.S.  
19 739, 750 (1987)). Put simply, there simply is no credible evidence whatsoever that Mr. Chen himself  
20 poses a flight risk.

21             Further, the Magistrate Judge's March 20 order extended location monitoring for Mr. Chen –  
22 which the Court initially was disinclined to continue following the security of the entire \$500,000  
23 bond – explicitly in order to provide the Government with the opportunity to investigate its claim

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24             informed Apple of both his departure and return dates.

1 that Mr. Chen had improperly retained information from a prior employer. Now, eight months later,  
2 there is no further evidence to support the Government's contention of additional alleged criminality.  
3 Mr. Chen is not a flight risk, and the remaining conditions of his pretrial release are more than  
4 adequate to ensure his continued participating in these criminal proceedings.  
5

6 III. Conclusion

7 For the foregoing reasons, Mr. Chen opposes the Government's motion to revoke the  
8 Magistrate Judge's order to remove the location monitoring requirement of his pretrial release  
9 conditions.

10 Dated: November 11, 2019

11 NOLAN BARTON & OLMOS LLP

12 /S/ Daniel B. Olmos  
13 Daniel B. Olmos

14 Attorney for Defendant Jizhong Chen